

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM: [REDACTED] POSTF-111750-02  
[REDACTED]

date: MAY 03 2002

to: LMSB Division, Heavy Manufacturing ([REDACTED])  
[REDACTED], Senior Team Coordinator, HMCT [REDACTED]

from: Associate Area Counsel, LMSB [REDACTED]

subject: [REDACTED] and [REDACTED] Co.  
One-Claim Rule under I.R.C. § 6427(i)

This memorandum responds to your request for assistance regarding whether you should disallow the Taxpayer's claims for additional fuel credits under the "One-Claim Rule" of I.R.C. § 6427(i). This memorandum should not be cited as precedent.

**ISSUE**

Whether the Taxpayer may amend a previously filed Form 4136, Credit for Federal Tax Paid on Fuels, to include amounts for "specially designed mobile machinery" under the line item for nontaxable use of undyed diesel fuel (off-highway business use), where it had already claimed on the previously filed Form 4136 an amount under the line item for nontaxable use of undyed diesel fuel (off-highway business use).

**CONCLUSION**

No. Pursuant to section 6427(i), a taxpayer may file only one claim with respect to fuel used during the taxable year. While section 34 provides the basis for a taxpayer's claiming a credit, it does not operate independently of section 6427. Consequently, claims made under section 34(a)(3) must meet all of the procedural provisions, including the One-Claim Rule, contained in section 6427.

**FACTS**

[REDACTED] Co., now [REDACTED] (the "Taxpayer") filed income tax returns for [REDACTED] through [REDACTED] including with each return Form 4136, Credit for Federal Tax Paid on Fuel, on which it claimed, in part, a credit for the nontaxable use of undyed diesel fuels. During the examination,

the Taxpayer submitted amended income tax returns and amended Forms 4136, claiming additional credits for the nontaxable use of undyed diesel fuels. In explanation, the Taxpayer stated, "Line 5G - 'Credit for Federal Tax on Fuels' was amended to include specially designed mobile machinery, which was previously omitted." Attached is a summary of the amounts claimed on the original and amended Forms 4136.

### DISCUSSION

Section 6427 of the Internal Revenue Code provides various provisions under which the Service must pay to the purchaser of fuel an amount equal to the tax imposed on the sale of such fuel. For example, section 6427(a) requires the Service to pay the purchaser an amount equal to

(1) the amount of tax imposed on the sale of the fuel to him, reduced by

(2) if he uses the fuel, the amount of tax which would have been imposed under section 4041 on such use if no tax under section 4041 had been imposed on the sale of the fuel

if tax has been imposed under sections 4041(a)(2), 4041(a)(3), or 4041(c) on the sale of the fuel and the purchaser uses the fuel other than for the use for which sold. I.R.C. § 6427(a). Similarly, under section 6427(1), the Service must pay to the ultimate purchaser of diesel fuel an amount equal to the aggregate amount of tax imposed on such fuel under sections 4041 or 4081, if the diesel fuel is used by any person in a nontaxable use.

Interestingly, however, purchasers other than government entities and certain tax-exempt organizations are not entitled to payment under section 6427 but may claim a credit under section 34. I.R.C. § 6427(k). The amount of the credit allowable under section 34(a) for the taxable year equals the sum of the amounts payable to the taxpayer under, among others, section 6427. I.R.C. § 34(a)(3).

While sections 34 and 6427 contain cross references to each other, they do provide different forms of relief. That is, section 6427 allows a refund of excise taxes paid for eligible taxpayers, while section 34 allows a credit for excise taxes paid for all others. This difference has provided grounds for dispute between the Service and taxpayers as to whether the "One-Claim Rule" of section 6427(i) applies to credits claimed under section 34.

Section 6427(i) limits the number of claims that a purchaser can make with respect to fuel used during the taxable year. Specifically, section 6427(i) provides:

Except as otherwise provided in this subsection, not more than one claim may be filed under subsection (a), (b), (d), (h), (l), or (o) by any person with respect to fuel used during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used during the taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year.

This provision is known as the "One-Claim Rule." As noted, subsection (a) provides a refund for the nontaxable use of fuel with respect to which tax is imposed under I.R.C. § 4041(a)(2), (a)(3), or (c), and subsection (l) provides a refund for the nontaxable use of diesel fuel with respect to which tax is imposed under I.R.C. § 4041 or 4081.

Section 34, however, does not explicitly provide for a one-claim rule and does not contain any reference to section 6427(i). Consequently, taxpayers have argued based on the plain language of section 34 that there are no limitations on the number of claims that may be filed for a tax credit under section 34. See Western Co. of N. Am. v. United States, 2002 U.S. Claims Lexis 65 (Fed. Cl. 2002); FPL Group, Inc. v. Commissioner, 116 T.C. 73 (2001); Schlumberger Tech. Corp. v. United States, 47 Fed. Cl. 298 (Fed. Cl. 2000).

The taxpayers prevailed on this argument in Schlumberger and FPL Group. In Schlumberger, the Court of Federal Claims held that section 34 provides authority independent of section 6427 for affording a credit and that, according to the legislative history, Congress viewed sections 39 and 6427 as parallel authorities. Schlumberger, 47 Fed. Cl. at 303-04. In FPL Group, the Tax Court agreed with the Court of Federal Claims and its reasoning. FPL Group, 116 T.C. at 77.

Recently, however, in Western Co., the Court of Federal Claims respectfully disagreed with the conclusion in Schlumberger and reversed its position on whether the One-Claim Rule of section 6427(i) applies to credits claimed under section 34. See Western Co., 2002 U.S. Claims 65 at \*26. The Court admitted that section 34(a) provides the authority for receiving a tax credit but disagreed that section 34(a) provides the substantive basis

for a tax credit independent of section 6427. Id. at \*26-\*27. In support of this conclusion, the Court made several observations.

First, section 34(a)(3) clearly refers to section 6427 and requires the taxpayer to meet the requirements of 6427 before he is entitled to a credit.

Thus, the determination of whether a taxpayer is eligible for the tax credit at issue is predicated on whether the taxpayer qualifies for a tax refund under § 6427. The mere fact that the substantive legal basis for a tax refund for diesel fuel used for nontaxable purposes is found in § 6427(1) and the one-claim rules is found elsewhere, namely § 6427(i), is immaterial as to whether the one-claim rule applies to tax credits under § 34(a).

Id. at \*27-\*28.

Second, the text of section 34(a) does not distinguish between the substantive provisions and the procedural provisions of section 6427. Id. at \*28. If Congress had intended for the procedural provisions not to apply to section 34(a), it would have included such limiting language in the text of section 34(a). Indeed, the courts have held taxpayers to the procedural requirements of former subsections of section 6427 when determining whether they were entitled to a credit under section 34. See id. at \*28 (describing Kennedy v. Commissioner, T.C. Memo. 1970-58, aff'd per curiam, 451 F.2d 1023 (3rd Cir. 1971), cert. denied, 406 U.S. 920 (1972) (The Tax Court denied a taxpayer's claim for credit, because he could not prove that he filed a timely return as required by former section 6427(c)(3)(A)(ii))). "Thus, the absence of a procedural rule contained either within § 34 or within § 6427(1) does not mean that procedural rules contained outside of § 6427(1) are not applicable." Id. at \*28-\*29.

Furthermore, by specifically including in section 34 the language "determined without regard to section 6427(k)," Congress clearly indicated its intention that other subsections of section 6427, such as the One-Claim Rule, would apply. Id. at \*29. Again, if Congress had not intended this result, it would have provided further limiting language.

Third, the Court found the taxpayer's interpretation of sections 34 and 6427 to be "a highly peculiar reading of the

statute," because it suggested that Congress intended for private taxpayers to have multiple opportunities for filing claims for credit for each year while it gave the government and certain tax-exempt organizations, none of which file tax returns, but one opportunity each year. Id. at \*29-\*30.

Finally, the Court found no suggestion in the statute that Congress intended for the One-Claim Rule to apply only to payments, as opposed to credits, and concluded that "such an inferred intent would have defeated the partial repeal of the one-claim rule with respect to a similar statutory provision that granted tax refunds for ultimate purchasers of fuels to produce 'certain alcohol fuels.'" Id. at \*30. If Congress had intended the One-Claim Rule to apply only to payments, as held by the Schlumberger Court, Congress' exclusion of the gasohol credits from the One-Claim Rule as provided in section 6427(i)(3) would have been meaningless. Id. at \*31.

In our view, therefore, Schlumberger and FPL Group have limited value. Schlumberger was expressly criticized by the same court that decided it and contains a flawed analysis of the interplay between sections 34 and 6427. Since, in our view, the Tax Court in FPL Group simply adopted the conclusion in Schlumberger without any independent analysis, FPL Group should carry no more weight than Schlumberger.

#### Observations

For [REDACTED], the Taxpayer did not make any claim for credit with respect to nontaxable use of undyed diesel fuel on Form 4136 as attached to its original [REDACTED] income tax return. Consequently, the Taxpayer is not barred by the One-Claim Rule from filing an amended Form 4136 on which it claims credit for nontaxable use of undyed diesel fuel. You, therefore, should remove this ground for disallowance from your report.

For [REDACTED], the Taxpayer claimed credit for off-highway business use of undyed diesel fuel on Form 4136 attached to its original [REDACTED] income tax return. The Taxpayer then amended Form 4136 claiming that it used undyed diesel fuel as heating oil. While we assume in light of the Taxpayer's explanation for the increase in the credit that the Taxpayer inadvertently put the amounts on the wrong line, we suggest that you confirm this with the Taxpayer.

If you have any questions, please call me at [REDACTED].

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[REDACTED]  
Associate Area Counsel (LMSB)

By: [REDACTED]

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Attachment